

REMARKS

Pending Infringement Litigation

5 This Reissue Application involves an issued patent which is the subject of a pending infringement action in Federal District Court (Newark, New Jersey).

Applicant included with the REISSUE APPLICATION an INFORMATION DISCLOSURE STATEMENT accompanied by copies of all cited references. The handwritten annotations on the copies of the references are not Applicant's, and Applicant is not bound by any handwritten annotations. Copies of references produced to the Applicant by the accused infringer are
10 believed true and correct copies, albeit Applicant lacks first-hand knowledge to verify this. Note that certain of the references provided are not competent as "prior" art, because they post-date the latest date for prior art citable. Applicant apologize in advance for any inconvenience imposed on the Office by the volume of references provided, but Applicant has represented to the Court hearing the pending infringement litigation that all of this material would be provided
15 to the Office.

In the pending infringement action, the alleged infringer says, "The Szynalski patent specification itself, at column 2, lines 15-43 and at column 3, lines 30-60, includes almost verbatim, the identical wording found in Gorayeb's 1996 workbook" and "Upon information and belief, the material in the Szynalski patent specification, at column 2, lines 15-43 and at column
20 3, lines 30-60 was copied from Gorayeb Seminar, Inc.'s "Stop Smoking" workbook. DEFENDANTS' ANSWER at 59-60 (Civ. 03-1051 (KSH), April 10, 2003). The Gorayeb workbook referred to is included in the previously-submitted INFORMATION DISCLOSURE STATEMENT. Applicant notes that the material allegedly copied by the patent owner from the alleged infringer's 1996 workbook appears in fact to have been copied by the alleged infringer from the
25 patent owner's own 1995 workbook.

Applicant respectfully believes that, assuming the Defendants' allegations regarding copying are true, they are irrelevant; that is, assuming Applicant did copy the cited portion of the Specification, copying this material does not affect the validity nor enforceability of the patent

claims. Applicant, however, respectfully requests that the Examiner make an independent evaluation of this issue and identify any potential problems.

Claim Amendments

- 5 These claim amendments must be accompanied by an explanation of the support in the disclosure. *See* 37 C.F.R. § 1.173(c). The following terms in the new claims are supported by the Specification as, *inter alia*, listed below:

Claim Term	Support	Comments
Ephedrine	col. 11, ln 42 et seq.	
Mahuang	col. 11, ln 42 et seq.	
caffeine	Amendment (19 Sept. 2001)	Caffeine is known in the art as a stimulant.
lobelia	col. 7, ln 17 et seq.	
wood betony	col. 7, ln 49 et seq.	
gotu kola	Col. 8, ln 41 et seq.	
kava kava	Col. 8, ln 48 et seq.	
valerian	Col. 9, ln 18 et seq.	
passionflower	Col. 9, ln 32 et seq.	
ginseng root	Col. 11, ln 27 et seq.	
peppermint	Col. 8, ln 57 et seq.	
ginger root	Col. 9, ln 36 et seq.	
licorice root	Col. 7, ln 67 et seq.	
gynema sylvestre	Col. 10, ln 60 et seq.	
inositol	Col. 10, ln 46 et seq.	
vanadium	Col. 10, ln 54 et seq.	
chromium	Col. 9, ln 59 et seq.	

The claim term “anti-smoking substance” is a substance selected from the group consisting of lobelia and equivalent(s) of lobelia. The Specification teaches that lobelia is effective to stop tobacco cravings because lobelia has antidepressant or anxiolytic activity. An equivalent of lobelia is a substance which, in the words of the Supreme Court, differs “insubstantially” from lobelia; for example, a substance which performs the same function (“aid in the reduction or cessation of said tobacco smoker’s craving to smoke tobacco”) in the same way (provide antidepressant or anxiolytic activity) to produce the same result (reduce tobacco cravings), is an “equivalent” of lobelia. The Specification describes several such equivalents; these include wood betony (col. 7, line 49 *et seq.*); gotu kola (Col. 8, line 41 *et seq.*); kava kava (Col. 8, line 48 *et seq.*); valerian (Col. 9, line 18 *et seq.*); and passionflower (Col. 9, line 32 *et seq.*). Known in the art are various other suitable antidepressant or anxiolytic substances (*e.g.*, 5-HTP, DL-phenylalanine, L-glutamine, folate). Note that these equivalent substances must have antidepressant or anxiolytic activity; anti-smoking products which simply make cigarettes taste bad, for example, or vitamin or mineral pills to provide a healthy diet which do not have antidepressant or anxiolytic activity, are therefore not “equivalents,” and thus do not infringe the claims.

During prosecution of the issued parent patent, the Examiner believed that in contrast to lobelia and other nutritional supplements, prescription-strength pharmaceuticals were not described in the Specification in compliance with 35 U.S.C. § 112. Applicant accordingly would like to clarify that the term “anti-smoking substance” encompasses nutritional supplements, but does not encompass prescription-strength pharmaceuticals. (n.b.: this contrasts with the claim term “anti-smoking drug,” which does include prescription-strength pharmaceuticals). Because pharmaceuticals are not within the ambit of the claim term “anti-smoking substance,” the claims are believed to avoid any potential problem of “recapturing” pharmaceutical subject matter allegedly surrendered to obtain issue of the parent patent.

SUMMARY

Applicant respectfully believes the application is in condition for prompt examination and allowance.

Respectfully submitted,

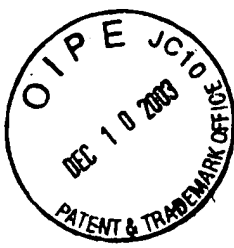
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15 26 November 2003

SD:\Goen Seminars\10.613,590 Prelim Amendment (25 Nov. 03).doc



IN THE UNITED STATES PATENT OFFICE

Inventor : Alexander Goen SZYNALSKI
Serial No. : 10/613,590
Patent No. : 6,431,874 B1
Filing Date : 30 June 2003
Title : *Stop Smoking Methods and Compositions*
Group Art : 3626
Examiner :

5 Commissioner of Patents
Post Office Box 1450
Mail Stop: Reissue / LITIGATION
Alexandria, VA 22313-1450
BY EXPRESS MAIL

10

Communication

Applicant filed a Reissue Application in this case on 30 June 2003.

15 As part of that Reissue Application, Applicant surrendered the original copy of the
letters patent on 2 July 2003.

Applicant has just received the enclosed Certificate of Correction. Applicant respectfully believes the Certificate of Correction now forms part of the previously-surrendered patent. Applicant accordingly hereby surrenders the original copy of the Certificate of Correction

20 Please feel free to telephone me if you have any questions.

Respectfully submitted

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26 November 2003

30 Pharmaceutical Patent Attorneys LLC
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Attn : Mark POHL (P 4014)
Morristown, NJ 07960-7397 USA
Enclosure

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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 6,431,874 B1
DATED : August 13, 2002
INVENTOR(S) : Alexander G. Szynalski

Page 1 of 1

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Column 12.

Lines 26-27 and 45, delete each occurrence of "an anti-smoking drug" and insert at each occurrence -- lobelia --.

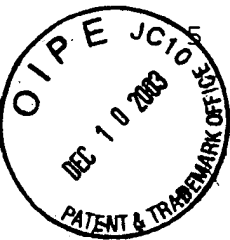


Signed and Sealed this

Eighteenth Day of November, 2003

A handwritten signature in black ink, appearing to read "James E. Rogan", written over a horizontal line.

JAMES E. ROGAN
Director of the United States Patent and Trademark Office



IN THE UNITED STATES PATENT OFFICE

Inventor : Alexander Goen SZYNALSKI
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Rule 178 Statement

This case is subject to co-pending reexamination (serial no. 90/006,704) and Federal court infringement proceedings. The issued patent is also the parent application of progeny applications including Serial No. 10/023,254.

20 Applicant respectfully informs the Office pursuant to Rule 178 that state court has been commenced against the patent assignee. I enclose a copy of the CIVIL COMPLAINT filed in this case, Docket No. MRSC-183-03 (16 Oct. 2003).

In brief, the CIVIL COMPLAINT alleges that the patent assignee's stop-smoking seminars include the three-part invention claimed (education + hypnosis + lobelia). The
25 CIVIL COMPLAINT appears to allege that a two-part seminar (education + hypnosis) does not work, and that advertising a seminar which allegedly does not work is deceptive. Assuming the CIVIL COMPLAINT allegations are correct, they appear to support the patentability of the claimed three-part combination *vis* an ostensibly-inoperable two-part combination.

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Please feel free to telephone me if you have any questions.

Respectfully submitted,

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26 November 2003

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15 Enclosure

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CIVIL DIVISION

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MORRIS COUNTY

DOCKET NO. **MRSC-183-03**

PETER C. HARVEY, Attorney General
of The State of New Jersey, and
RENI ERDOS, Director, New Jersey
Division of Consumer Affairs,

Plaintiffs,

vs.

GOEN TECHNOLOGIES CORPORATION (a New
Jersey corporation, d.b.a. "Trim Spa
Corporation/TrimSpa", "Weight Loss
Labs" and "Health Sciences Direct"),
NUTRAMERICA CORPORATION (a Delaware
Corporation), A. GOEN SEMINARS INSTITUTE,
INC. (a Delaware corporation, d.b.a.
"Goen Media Group" and "Advanced Health
Sciences"), ALEX SZYNALSKI, a.k.a. ALEX
GOEN, (individually and as officer or
agent of Goen Technologies, Inc., Goen
Seminars, and NutramERICA), ALBERT
FLEISCHNER, Ph.D., (individually and as
officer or agent of Goen Technologies,
Inc., Goen Seminars, and NutramERICA and
DOES 1 through 20,

Defendants.

Civil Action

COMPLAINT

PETER C. HARVEY, Attorney General of the State of New Jersey and RENI ERDOS, Director of the New Jersey Division of Consumer Affairs, with offices located at 124 Halsey Street, 7th Floor, Newark, New Jersey 07102, by way of complaint, upon information and belief, state:

NATURE OF COMPLAINT AND BACKGROUND

1. A. Goen Seminars Institute, Inc. ("Goen Institute") is a New Jersey-based company that promotes and conducts weight loss and smoking cessation seminars. Goen Institute was founded by Alex Szynalski, who is also known as Alex Goen.

2. Goen Technologies Corporation ("Goen Technologies") and Nutramerica Corporation ("Nutramerica") -- affiliates of Goen Institute -- are New Jersey-based companies that develop and distribute dietary supplements including TrimSpa, CarbSpa and Lipo Spa and smoking cessation aides ("Goen Supplements"). Goen Supplements are advertised and sold at Goen Institute seminars and through direct mail promotions, newspaper advertisements, radio advertisements and the internet.

3. In promotional materials for Goen Supplements, defendants state that the supplements are drug free. This statement is misleading because, as explained in greater detail below, certain Goen Supplements, such as TrimSpa, contain a combination of ingredients that has the same dangerous side effects as certain drug products banned by the Food and Drug Administration. In fact, one of TrimSpa's active ingredients is ephedra, an ephedrine

alkaloid derived from ma huang, a Chinese herbal plant and stimulant. Dangerous side effects associated with the use of ephedra and other ephedrine alkaloids, especially when used with caffeine, are well documented in medical literature. Specifically, ephedra has been proven to cause negative side effects in healthy individuals, including headaches, irritability and heart palpitations. Ephedra has also been associated with serious adverse health events such as strokes, seizures, high blood pressure and heart attacks. Due to the negative side effects associated with the combination of ephedrine alkaloids and caffeine, the Food and Drug Administration banned the sale of ephedrine/caffeine combinations in over-the-counter drug products in 1983.

4. The use of TrimSpa and other Goen Supplements is an essential component of Goen Institute's weight loss and smoking cessation seminars. In promotional materials, however, the Goen Institute claims that its weight loss seminars teach consumers a "proven way to slimness without dangerous drugs, starvation diets or endless brutal exercise." According to promotional materials, the Goen system "will let hypnosis do the work for you" and "practically works like magic." The promotional materials fail to inform consumers that Goen's "proven way to slimness" requires consumers to purchase Goen Supplements.

5. In promotions for Goen Institute's smoking cessation seminars defendants create the false impression that the Goen method relies principally, if not exclusively, on the use of hypnosis. Indeed, defendants mislead consumers by stating that consumers can stop smoking without the use of dangerous drugs. Promotional materials fail to inform consumers that a key component of the Goen system is the purchase and use of Goen Supplements.

6. Goen seminars - and the promotional material associated with those seminars - are nothing more than a classic bait and switch ploy. The purpose of the seminars is to sell Goen Supplements, rather than teach consumers to lose weight and stop smoking through hypnosis as advertised. Promotional materials for Goen seminars are false and misleading because they fail to inform consumers that the Goen method to weight loss and smoking cessation requires the purchase of Goen Supplements and that the purchase of such supplements will require consumers to make substantial expenditures beyond the cost of the seminar itself. Moreover, defendants do not disclose to consumers the adverse side effects associated with ephedra, a key ingredient in TrimSpa.

7. As stated above, defendants also sell TrimSpa and other Goen Supplements through direct mail, newspaper advertisements, radio advertisements, and the internet. In promotional materials used in these media, defendants make unsubstantiated claims about the effectiveness of TrimSpa and other Goen Supplements.

Additionally, defendants suggest that the federal government has endorsed TrimSpa as safe and effective. For example, defendants use the fact that they have obtained a patent for TrimSpa to create the false impression that the United States Government has found that TrimSpa is a safe and effective product.

8. Moreover, the TrimSpa website creates the false impression that it is safe to use TrimSpa and other Goen Supplements without first consulting a doctor. The website -- in large bold type -- states that consumers can use Goen Supplements without first consulting a doctor. Disclaimers, warning consumers to consult their doctor before using Goen Supplements, can be found, however, in small footnotes at the end of the consumer's website tour.

9. In sum, seminars and promotional materials for Goen Institute seminars and Goen Supplements are deceptive because, among other things, they: (a) mislead consumers by claiming that Goen's methods are drug-free; (b) make unsubstantiated claims about the effectiveness of Goen Supplements; and (c) fail to disclose the adverse health risks associated with the use of certain Goen Supplements.

10. The Attorney General and the Director of the Division of Consumer Affairs now seek, among other things, to: (a) permanently enjoin defendants from advertising Goen weight loss and smoking cessation seminars without proper disclosure of: (i) the role Goen

Supplements play in Goen Institute seminars, namely, that they are an essential component of Goen's seminars; (ii) the costs of Goen Supplements; and (iii) the health risks associated with the use of Goen Supplements containing ephedra; (b) permanently enjoin defendants from publishing any advertisement for any Goen Supplement that contains ephedra without disclosing, at the beginning of the advertisement, that the supplement contains ephedra and clearly describing all of the known risks associated with the use of ephedra; (c) permanently enjoin defendants from making unsubstantiated claims about TrimSpa, Lipo Spa, CarbSpa or any other Goen Supplement; (d) permanently enjoin defendants from making any statements that suggest or imply that defendants' patent for TrimSpa constitutes an endorsement by the United States government of the safety or efficacy of TrimSpa; and (e) require defendants to prominently disclose on the TrimSpa website, or the website dedicated to any other Goen Supplement, the risks associated with the use of any Goen Supplement sold on that website.

JURISDICTION AND VENUE

11. The Attorney General of the State of New Jersey is charged with the responsibility of enforcing the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("the Act"), and the regulations promulgated thereunder. The Director of the Division of Consumer Affairs is charged with the responsibility of

administering the Act on behalf of the Attorney General. This action seeking injunctive and other relief is brought by the Attorney General and the Director of the Division of Consumer Affairs pursuant to the provisions of N.J.S.A. 56:8-8, 56:8-11, and 56:8-13.

12. Goen Technologies, Nutramerica, Goen Institute, Alex Goen, Albert Fleischner, and Does 1 through 20 have conducted and continue to conduct business within the State of New Jersey through Goen Technologies' corporate headquarters at 8 Ridgedale Ave., Suite 205, Cedar Knolls, New Jersey, 07927. The violations of law alleged herein have been, and continue to be, carried out within Morris County, the location of Goen Technologies' corporate headquarters, and elsewhere in the State of New Jersey.

THE DEFENDANTS

13. Goen Technologies is a New Jersey corporation that is engaged in the business of manufacturing and distributing dietary supplements, including TrimSpa, Lipo Spa and CarbSpa. Goen Technologies' filing with the Secretary of State lists "Trim Spa Corporation/TrimSpa," "Weight Loss Labs" and "Health Sciences Direct" as other names associated with it. The entities known as Trim Spa Corporation, Weight Loss Labs and Health Sciences Direct are divisions of Goen Technologies, rather than independent corporations. Goen Technologies' principal place of business is 8 Ridgedale Avenue, Cedar Knolls, New Jersey, 07927.

14. Nutramerica is a Delaware corporation that filed with the Secretary of State of New Jersey on February 29, 1996. In 1998, its status as a corporation eligible to do business in New Jersey was revoked for failure to make annual report payments. TrimSpa, Lipo Spa and CarbSpa are all advertised as Nutramerica products. The labels for Lipo Spa and CarbSpa refer to Nutramerica as a Goen Company. Nutramerica's offices are located at 8 Ridgedale Avenue, Cedar Knolls, New Jersey 07927.

15. Goen Institute is a Delaware corporation that describes itself as "the nation's largest weight loss and stop smoking seminar corporation." Its filing with the Secretary of State of New Jersey lists "Goen Media Group" and "Advanced Health Sciences" as related names. Its promotional materials list its address as 8 Ridgedale Ave., Suite 205, Cedar Knolls, New Jersey, 07927.

16. Alex Szynalski, who is also known as Alex Goen, is the founder of Goen Institute and is actively involved in the advertising program that is used to promote the seminars. He is also actively involved in the business operations of Goen Technologies and Nutramerica, including their sale and distribution of TrimSpa, Lipo Spa and CarbSpa.

17. Albert Fleischner, Ph.D. is on the scientific advisory board of the Goen Institute, the Chief Science Officer of the Goen Group and the Chief Operating Officer of TrimSpa Corporation.

18. Defendants DOES 1 through 20 are officers, managers, agents, or independent contractors of Goen Technologies, the Goen Institute or Nutramerica who caused or engaged in violations of law alleged herein. Because the true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants sued herein under the fictitious names of DOES 1 through 20, inclusive, are unknown to plaintiffs, plaintiffs have sued said defendants by such fictitious names. Plaintiffs will amend this complaint to identify each such defendant and his or her specific involvement in the wrongdoing alleged herein when the same has been ascertained.

COUNT ONE

(Misrepresentations With Respect
to the Goen Weight Loss Seminars)

19. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth herein and incorporated by reference.

20. Defendants conduct weight loss seminars in New Jersey and throughout the United States. According to the Goen Institute's website, Goen seminars are offered on a daily basis throughout the country.

21. Defendants advertise the seminars, hereinafter referred to as the "Goen Weight Loss Seminars," in mail distributions to New Jersey residents and in New Jersey newspapers.

22. One mail promotion describes the seminar as a "Seminar with Hypnosis" and a "Risk-Free Hypnosis Seminar - 110% Guaranteed." The promotion states that the seminars would introduce people to a "fail proof" system that "practically works like magic" to help people lose "10 to 20 pounds per month to as much as 120 pounds per year." The promotion stresses that the system uses hypnosis and is a "proven way to slimness without dangerous drugs, starvation diets, or endless brutal exercise."

23. The promotion does not mention that the effectiveness of the system depends on the use of dietary supplements. Nor does it disclose that the dietary supplements that it depends on are developed and distributed by an affiliate of the Goen Institute.

24. One advertisement that has appeared in New Jersey newspapers states that:

Attend Goen Seminar's famous weight loss with hypnosis seminar and in three hours experience for yourself 34 high powered fat eliminating suggestions best described as a deliberate and systematic bombardment of fat destroying technology.

[Emphasis in text.]

That's right. The Goen Method is arguably the finest weight reducing hypnosis session of its kind.

[Emphasis in text.]

25. The advertisement also states that "if this seminar is not the best weight loss program in the United States, plain and

simple, I will give you your money back plus 10% at seminar's end.
No questions asked."

26. The advertisements fail to disclose that the "Goen Method" relies on the use of dietary supplements that are promoted at the seminar and are developed and distributed by an affiliate of the Goen Institute.

27. Another advertisement that appeared in New Jersey newspapers states that:

You've Tried Everything and

Nothing Has Worked

This Is Designed To Work!

Think of it! Finally, a proven way to slimness without dangerous drugs, starvation diets or endless brutal exercise! Instead, firm-up fast and experience for yourself 34 mesmerizing, fat-eliminating suggestions designed to work every minute of every day. Designed so that cravings no longer get the best of you because you are in total control. In fact, my system is so superior and surpasses everything else you've tried in the past that I was compelled to offer a 110% Seminar Guarantee. No longer must you deal with hard to follow starvation diets, guilt or grueling exercises - no way. My system just doesn't allow such absurdities.

Imagine Waking Up Morning

After Morning Thinner and

Leaner Than Ever Before!

My friend, your mind is such an extremely powerful resource already, yet hypnosis can intensify that power immensely. Tap deeply

into your subconscious weight loss mechanisms, and receive suggestions to reduce cravings and desires for second helpings; things you never dreamed of before! Here's how you can ...

Reshape Your Figure To The Slim, Trim,

Firm Body You Desire ...

Imagine Never Ever Having To Worry

About Your Weight Again!

That's right. Even if you've tried every diet that ever existed but failed, that's okay. My guarantee still stands. In fact, I feel that you actually deserve a pat on the back for all of your attempts. Hey look at it this way, you tried, you failed, ... but ... you tried again. Although this time, there's no trying allowed. Nope, not at my seminar. Trying is not an option. However losing weight ... well ... that's a given.

Yeah, yeah. So you've tried other diets and maybe other *hypnotists*, big deal. There's a reason why I receive piles and piles of testimonials.

My Program Is Designed To Make

Losing Weight An Easy Thing!

In fact, the more diets you've tried the better! That only means that you really, desperately want to lose weight. Quite frankly, your strong desire to lose weight will manifest itself and empower you during the *hypnosis* session, giving you an extra advantage. ...

[Bold in original, italics added, footnotes omitted.]

28. The advertisement also states that "by the end of the seminar you must be completely satisfied. If not, just ask for a refund plus 10% at seminar's end."

29. The advertisement fails to disclose that Goen's "proven way to slimness without dangerous drugs" requires the use of dietary supplements that are developed and distributed by an affiliate of the Goen Institute.

30. Moreover, consumers who called the Goen Institute prior to attending the seminars to inquire whether the seminar required additional purchases were told that it did not.

31. The advertisement also suggests that hypnosis is an essential part of the Goen Weight Loss Seminar and an essential part of the Goen weight loss program.

32. The suggestion that hypnosis is an essential part of the Goen Weight Loss Seminars and an essential part of the Goen weight loss program is reinforced by the brochure that is distributed at the Goen Weight Loss Seminars, which states that:

Hypnosis "is one of the safest and most effective methods to lose weight."

Almost everyone over the age of six can be hypnotized.

You may be hypnotized without knowing it.

Hypnosis works by changing your subconscious responses to eating fattening foods from "making your body scream for sugar or fat" to "aid[ing] you in remaining calm and pain free."

33. The suggestion that hypnosis is an essential part of the Goen Weight Loss Program is false. In fact, the hypnosis part of the seminar is not essential to the weight loss program. No effort was made during the hypnosis part of the seminar to ensure that each participant was hypnotized or that the participants who were hypnotized underwent the advertised changes to their subconscious responses to eating fattening foods.

34. The brochure also states that the seminar is designed so that participants "can achieve immediate and life long results after only one simple session."

35. The statement that defendants' method was designed so that participants "can achieve immediate and life long results after only one simple session" is false. If the statement were true, then there would be no need to sell TrimSpa and other Goen Supplements to participants as part of the Goen weight loss program.

36. A sales pitch that has been used to sell TrimSpa and other Goen Supplements at the seminars states that the supply available at the seminar was limited and that it was purchased at a special price so that the savings could be passed on to the participants at the seminar. It did not reveal that the supplements are developed and distributed by affiliates of the Goen Institute. Because the supplements were developed and distributed

by affiliates of the Goen Institute, the statements about a limited supply and a special price were false or misleading.

37. Neither the labels nor the advertisements for TrimSpa or any other Goen Supplement that is offered at the weight loss seminars states that the product is more effective when used in conjunction with hypnosis.

38. Defendants advertise a seminar that will purportedly teach participants an inexpensive program for weight loss that is based on hypnosis. The consumers who take the bait are then sold a weight loss program whose alleged effectiveness depends on using Goen Supplements, such as TrimSpa and Lipo Spa, rather than hypnosis.

39. The sales pitch for TrimSpa at the seminars also fails to disclose that TrimSpa contains a combination of ephedrine alkaloids and caffeine and that the use of this combination can result in serious adverse health consequences, including strokes, seizures, high blood pressure and heart attacks. Rather, the advertisements for the seminars state that the Goen weight loss program does not use drugs. Moreover, the sales pitch for Goen Supplements at seminars is that, because they are dietary supplements, as opposed to drugs, they are perfectly safe. In fact, the combination of ephedra and guarana, which are active ingredients in TrimSpa, has the same chemical composition, and the same adverse side-effects, as the ephedrine alkaloids/caffeine combination in drugs that the

Food and Drug Administration banned for over-the-counter use. Those negative side effects include headaches, irritability and heart palpitations, in normally healthy individuals. They also include strokes, seizures, high blood pressure and heart attacks.

40. Although some of these adverse health effects are identified on the TrimSpa label, the sales pitch for TrimSpa at the weight loss seminars does not encourage participants to read the label before purchasing it.

41. Consumers who attend the Goen Weight Loss Seminars are encouraged to purchase ephedra-based TrimSpa without any disclosure about the risks associated with its use. At best, they are asked to sign a form at the commencement of the seminar and to complete an order form for the Goen Supplements that state, in small print at the bottom of each form, that "I understand, as with any program, it's always a good idea to consult with your physician before beginning any new routines or taking any new products." Rather than warn consumers of the risks associated with the use of ephedra-based TrimSpa, the form advises them that they will be entitled to a refund if they return unopened bottles, accompanied by a doctor's note within 30 days.

42. The 110% guarantee that the defendants offer in connection with the weight loss seminars is also based on deception. The advertisements for the seminars state that "[b]y the end of the seminar you must be **completely** satisfied. If not,

just ask for a refund plus 10% at seminar's end." (Emphasis in original.)

43. This advertisement is deceptive because it is only after a consumer attends the seminar that he or she discovers that the Goen program depends on the use and alleged effectiveness of Goen Supplements. At that time, consumers who are willing to take Goen Supplements as part of a weight loss program are in no position to know or say whether they are completely satisfied. For them, the original guarantee that is used to lure them to attend the seminar is essentially worthless.

44. The only consumers inclined to demand a refund because they are not completely satisfied with the seminar are consumers who have a sufficient commitment to losing weight to attend the seminar but will not participate in any weight loss program that requires them to use dietary supplements, including supplements that are represented to be part of an effective weight loss program.

45. Moreover, these consumers, and the other consumers who attend the seminars, are required to fill out a form that purports to state the guarantee "As Advertised" but, in fact, changes the terms of the advertised 110% guarantee in two respects. First, it makes a consumer's refund contingent on returning his or her workbook. Second, it states that consumers who have prepaid for

the seminar must apply for their refunds, which will be returned at a later time.

46. Goen Weight Loss Seminars regularly refuses to make full or timely payments to people who demand a refund because they are not completely satisfied with the seminar. For example, some consumers who paid in cash and asked for a 110% refund were only offered a 100% refund.

47. The consumers who want to try a weight loss program that uses Goen Supplements before deciding whether they are completely satisfied with the seminar are offered a different guarantee to deter them from demanding an immediate refund and to lure them into purchasing the Goen Supplements. They are told that "if you choose not to obtain a refund at the end of the seminar you are automatically enrolled in our unadvertised extended lifetime money back offer." According to the new guarantee, a consumer will be entitled to get his or her money back if he or she (a) is not completely satisfied after attending two additional Goen seminars, (b) has his or her workbook stamped at the seminar and (c) follows the instructions for applying for a refund.

48. Goen Weight Loss Seminars regularly refuses to make full or timely payments to people who demand a refund they are entitled to under the extended lifetime money back offer.

49. Alex Goen is involved in promoting the Goen Weight Loss Seminars. Indeed, the seminars are promoted as his creation and he is featured in the promotions for the seminars.

50. Some of the promotions identify Dr. Albert Fleischner as the person who directs the "brilliant scientific staff" of the Goen Institute. Other promotions, which do not identify Dr. Fleischner's affiliation with the Goen Institute, include the following testimonial from Dr. Fleischner - "Goen's method of hypnosis is unlike anything I've ever seen. Not only is it clearly unique but highly effective. For once, a deliberately bold-bombardment, and systematic approach to fat destroying technology."

51. N.J.S.A. 56:8-2.2 states that it is unlawful to advertise merchandise as part of a plan or scheme not to sell the item or service so advertised. Defendants violated N.J.S.A. 56:8-2.2 by advertising the Goen Weight Loss Seminar as part of an inexpensive weight loss program based predominantly on hypnosis when, in fact, the defendants' aim was to sell participants an expensive weight loss program that required them to purchase Goen Supplements, whose alleged effectiveness had nothing to do with hypnosis.

52. N.J.S.A. 56:8-2 prohibits, *inter alia*, the use or employment of any "unconscionable commercial practice, deception, fraud, false pretense, false promise [or] misrepresentation...in connection with the sale or advertisement of any merchandise...."

53. The defendants violated, and continue to violate, N.J.S.A. 56:8-2 by (a) selling tickets to the seminars by misrepresenting that the seminars would teach participants how to lose weight through hypnosis, (b) selling tickets to the seminars without disclosing that the true purpose of the seminars was to sell Goen Supplements, and (c) selling tickets to the seminars through the lure of a refund policy, which they refused to honor.

54. The defendants also violated, and continue to violate, N.J.S.A. 56:8-2 by (a) selling TrimSpa at the seminars without disclosing the risks associated with its use, (b) selling TrimSpa and other Goen Supplements at the seminar without disclosing the affiliation between the Goen Institute and the companies that developed and distributed the Goen Supplements, and (c) providing testimonials for the Goen Institute from persons who were affiliated with it without disclosing the affiliation.

COUNT TWO

(Misrepresentations With Respect
to the Goen Smoking Cessation Seminars)

55. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth herein and incorporated by reference.

56. Defendants conduct smoking cessation seminars in New Jersey.

57. Defendants advertise the seminars, hereinafter identified as the "Goen Smoking Cessation Seminars," in New Jersey newspapers.

58. One newspaper advertisement states that the Goen Smoking Cessation Seminar would introduce people to a "guaranteed method," which uses a "patented technology" that allows people to stop smoking without "rely[ing] on will power" and without "us[ing] drugs, the patch nicotine gum or, worst of all, substitut[ing] food for cigarettes."

59. The advertisement states that the seminar uses hypnosis and is "designed to work with absolutely no willpower, no anxiety, no weight gain, and above all, no cravings."

60. The advertisement includes a testimonial from a consumer who had smoked a minimum of two packs a day for 38 years and claimed that at the completion of the seminar he "walked out a non-smoker with no cravings or desires for a smoke." The testimonial suggests that participants would be able to leave the seminar without any further desire to smoke and without any need to spend additional funds to maintain their desire not to smoke.

61. People who called prior to attending the seminar to inquire whether the program required additional purchases were told that it did not.

62. The advertisement also states that "[i]f for any reason you are not totally satisfied by seminar's end, just ask for a refund plus 10%."

63. The suggestion that hypnosis is an essential part of the Goen smoking cessation program is false. The hypnosis part of the

seminar is not essential to the stop smoking program. No effort is made during the hypnosis part of the seminar to ensure that each participant is hypnotized or that the participants who are hypnotized experience the changes that will cause them to stop smoking.

64. The purpose of the Goen Smoking Cessation Seminar is to sell Goen Supplements to the participants. The Goen Supplements include Cigsation, which contains a natural ingredient that purportedly "mimics the action of nicotine in the body, but does not create the physiological dependence experienced by nicotine users." They also include weight loss products, including TrimSpa with ephedra, to help consumers lose weight after they have stopped smoking.

65. Neither the labels nor the advertisements for any of the Goen Supplements that are sold to participants of the Goen Smoking Cessation Seminar state that they are more effective when combined with hypnosis or that they are unnecessary for consumers who are breaking their smoking habit through hypnosis.

66. The sales pitch for the Goen Supplements at the Goen seminars is that if you are not satisfied with the supplements, you can return the unopened bottles for a complete refund. Participants are not advised to read the label of the Goen Supplements before purchasing them. Nor are they told that some of

supplements contain ephedra or that the use of ephedra subjects them to the risk of serious adverse health consequences.

67. Consumers who attend the Goen Smoking Cessation Seminars are encouraged to purchase ephedra-based TrimSpa without any disclosure about the risks associated with its use. At best, they are asked to sign a form at the commencement of the seminar and to complete an order form for the Goen Supplements that state, in small print at the bottom of each form, that "I understand, as with any program, it's always a good idea to consult with your physician before beginning any new routines or taking any new products." Rather than warn consumers of the risks associated with the use of ephedra-based TrimSpa, the form advises them that they will be entitled to a refund if they return unopened bottles, accompanied by a doctor's note within 30 days.

68. Defendants advertise a seminar that will purportedly introduce participants to an inexpensive program to stop smoking that was based on hypnosis. The consumers who take the bait are then sold a program that requires them to purchase Goen Supplements, including weight loss supplements, whose alleged effectiveness has nothing to do with hypnosis.

69. The 110% guarantee that the defendants offer in connection with the Goen Smoking Cessation Seminars is also based on deception.

70. The advertisements for the seminars state that "[b]y the end of the seminar you must be **completely** satisfied. If not, just ask for a refund plus 10% at seminar's end." (Emphasis in original.)

71. This advertisement is deceptive because it is only after a consumer attends the seminar that he or she discovers that the Goen program depends on the use and alleged effectiveness of Goen Supplements. At that time, consumers willing to take Goen Supplements as part of a smoking cessation program are in no position to know or say whether they are completely satisfied. For them, the original guarantee that is used to lure them to attend the seminar is essentially worthless.

72. The only consumers inclined to demand a refund because they are not completely satisfied with the seminar are consumers who have a sufficient commitment to stop smoking to attend the seminar but no interest in participating in any program that requires them to use dietary supplements, including supplements that are represented to be part of an effective smoking cessation program.

73. Moreover, each of these consumers, and every other consumer who attends the seminars, is required to fill out a form that purports to state the guarantee "As Advertised" but, in fact, changes the terms of the advertised 110% guarantee in two respects. First, it makes a consumer's refund contingent on returning his or

her workbook. Second, if the consumer has prepaid for the seminar, then he or she does not receive a refund on demand but will have to mail a written application to qualify for the refund.

74. Goen Smoking Cessation Seminars regularly refuse to make full or timely payments to people who demand a refund because they are not completely satisfied with the seminar. For example, some consumers who paid in cash and asked for a 110% refund were only offered a 100% refund.

75. The consumers who want to try a smoking cessation program that uses Goen Supplements before deciding whether they are completely satisfied with the seminar are offered a different guarantee to deter them from demanding an immediate refund and to lure them into purchasing the Goen Supplements. Each is told that "if you choose not to obtain a refund at the end of the seminar you are automatically enrolled in our unadvertised extended lifetime money back offer." According to the new guarantee, a consumer will be entitled to get his or her money back if he or she (a) is not completely satisfied after attending two additional Goen seminars, (b) has his or her workbook stamped at the seminar and (c) follows the instructions for applying for a refund.

76. Goen Smoking Cessation Seminars regularly refuse to make full or timely payments to people who demand a refund they are entitled to under the extended lifetime money back offer.

77. Alex Goen is involved in promoting the Goen Smoking Cessation Seminars. Indeed, the seminars are promoted as his creation and he is featured in the promotions for the seminars.

78. Some of the promotions identify Dr. Albert Fleischner as the person who directs the "brilliant scientific staff" of the Goen Institute. Other promotions, which fail to identify Dr. Fleischner's affiliation with the Goen Institute, use his testimonial that "Goen's method of hypnosis is unlike anything I've ever seen. Not only is it clearly unique but highly effective. For once, a deliberately bold-bombardment, and systematic approach to fat destroying technology."

79. N.J.S.A. 56:8-2.2 states that it is unlawful to advertise merchandise as part of a plan or scheme not to sell the item or service so advertised. Defendants violated N.J.S.A. 56:8-2.2 by advertising the Goen Smoking Cessation Seminars as part of an inexpensive stop smoking program based predominantly on hypnosis when, in fact, the defendants' aim was to sell participants an expensive stop smoking program that depended on the use of Goen Supplements, whose alleged effectiveness had nothing to do with hypnosis.

80. N.J.S.A. 56:8-2 prohibits, *inter alia*, the use or employment of any "unconscionable commercial practice, deception, fraud, false pretense, false promise [or] misrepresentation...in connection with the sale or advertisement of any merchandise...."

81. The defendants violated, and continue to violate, N.J.S.A. 56:8-2 by (a) selling tickets to the seminars by misrepresenting that the seminars would teach participants how to stop smoking through hypnosis, (b) selling tickets to the seminars without disclosing that the true purpose of the seminars was to sell Goen Supplements, and (c) selling tickets to the seminars through the lure of a refund policy that they refused to honor.

82. The defendants also violated, and continue to violate, N.J.S.A. 56:8-2 by (a) selling TrimSpa at the seminars without disclosing the risks associated with its use and (b) selling TrimSpa and other Goen Supplements at the seminar without disclosing the affiliation between the Goen Institute and the companies that developed and distributed the Goen Supplements.

COUNT THREE

(Misrepresentations About TrimSpa,
CarbSpa and Lipo Spa)

83. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth herein and incorporated by reference.

84. Through magazine and other advertisements and displays on TrimSpa's website "www.trimspa.com", defendants, have asserted, and continue to assert, numerous false, deceptive, or misleading claims about ephedra-based TrimSpa, including but not limited to the following:

A. TrimSpa does not contain any drugs.

This statement is deceptive because one of TrimSpa's active ingredients, ma huang (or ephedra) and guarana seed, has the same chemical composition and the same adverse health effects as the ephedrine/caffeine combination that was banned by the Food and Drug Administration as an over-the-counter drug. Those adverse health effects include strokes, seizures, high blood pressure and heart attacks.

- B. "Trim Spa's patented formula takes the extra glucose, or blood sugar that your body produces when you overeat-or eat the wrong things-and directs it to your muscles, where it's used as energy instead of being stored as-you guessed it-fat!"

In fact, there is no basis for this claim. In the patent application for TrimSpa, glucosamine, in the form of glucosamine sulfate, is identified as active ingredient that "contributes to weight loss' because it "blocks the effect of insulin, burning up stored fat and resulting in weight loss." However, recent clinical studies have found that glucosamine infusion in humans has no effect on insulin or insulin-induced glucose uptake.

- C. The "thermogenic (fat destroying) influences" of TrimSpa "helps to immediately metabolize ugly fat."

In fact, ma huang (or ephedra), the purported fat destroying ingredient in TrimSpa, does not metabolize fat. Rather, it acts as an appetite suppressant, and requires several weeks before weight loss is realized. Nor is there any other basis for claiming that ephedra causes thermogenesis because the amounts of ephedra in the

recommended dosages are grossly insufficient to achieve a thermogenic effect.

- D. "...a clinical study also proves this formula produces 100% more weight loss than diet and exercise alone."

This statement is misleading because "100% more weight loss than diet and exercise alone" may not be clinically significant and defendants failed to identify any clinical study that demonstrated that the use of their formula produces a clinically significant amount of weight loss when compared to diet and exercise alone. For example, a one pound loss of weight compared to a two pound loss of weight would not be clinically significant.

85. The Nutramerica website makes the following statements about ephedra-based TrimSpa:

TrimSpa represents the latest advancement in the field of weight reduction. Featuring a unique blend of specialized herbs and essential nutrients, this high tech balanced formula is not only exceptionally safe and effective, but is designed to help your body burn fat naturally, while protecting, even increasing vital muscle tissue.

[Emphasis added.]

The website advertisement is false or misleading because: (a) it makes the false statement that TrimSpa is exceptionally safe; (ii) it fails to disclose the risks associated with the use of ephedra-based TrimSpa; and (c) it suggests that TrimSpa is more effective than other weight loss products that use ephedrine/caffeine combinations when there is no scientific basis for that claim.

86. Print advertisements for ephedra-based TrimSpa also state that:

This Formula Is So Effective At Producing Weight Loss! It Is Protected By A Trademark And A Patent Has Now Been Approved By The United States Government Patent And Trademark Office.

Moreover, radio advertisements for ephedra-based TrimSpa state that:

Trim Spa is so unique the United States Government recognized it and awarded Trim Spa a patent. It is almost impossible in this type of industry to get a patent but Trim Spa proved to be so effective and so unique, there's nothing else like it.

[Emphasis added.]

Trim Spa's unique herbal blend and key ingredients are so effective - Trim Spa has been awarded a U.S. government patent.

[Emphasis added.]

[H]ard nosed research scientists in more than 21 clinical studies agreed that people experienced significant weight loss using Trim Spa's key ingredients. In fact, the U.S. government found Trim Spa so unique and effective they awarded it a patent."

[Emphasis added.]

87. The statements in the previous paragraph create the false impression that the United States Patent and Trademark Office did an independent evaluation of the effectiveness of the TrimSpa formula and awarded TrimSpa a patent based on a finding that the formula was an effective product. They also create the false impression that glucosamine -- the ingredient that makes TrimSpa

unique - also makes it more effective than other weight loss products that use an ephedrine/caffeine combination.

88. Radio advertisements for ephedra-based TrimSpa promote it as "an amazing high speed diet pill" that works without a "diet routine" and without an "exhausting exercise routine." None of them states that TrimSpa contains ephedra. Nor does any identify the risks associated with the use of TrimSpa or warn consumers to consult their doctors before embarking on a weight loss program.

89. Other print advertisements for ephedra-based TrimSpa state that "[r]esearch proves that by using patented TrimSpa, you can become 15 times more confident, unforgettable and heart-stopping gorgeous." There is no support for this claim.

90. The defendants have also introduced an ephedra-free version of TrimSpa, TrimSpa EF, which they promote for consumers who "have high blood-pressure, thyroid complications, are taking an MAO inhibitor, or have a history of heart complications." The advertisements for TrimSpa EF identify five active ingredients -- forksolin, chromium, glucomannan, green tea extract, and vanadium -- that purportedly make it an effective weight loss supplement. In fact, none of these ingredients has been adequately tested to establish that it is, either individually or in combination with the other ingredients, safe or effective as part of a weight loss program.

91. The TrimSpa website includes statements that are designed to lead consumers to believe that ephedra is safe because it is a natural product. One example is the following description of the TrimSpa ingredient that increases a person's metabolic rate and calorie expenditure:

Listen up. Before you jump on the prescription drug bandwagon that most pharmaceutical companies would love for you to join, let's quash any apprehension about using natural supplements. (see Chart A on pg. 8.) Because the main ingredient we happen to be referring to is completely natural and speeds up the amazing transformation. Not only that, but this Chinese herb has been used for at least 5,000 years.

92. The product label for TrimSpa, includes the following misleading claims about TrimSpa, including but not limited to the following:

A. TrimSpa contains an "Appetite Control Blend."

In fact, none of the components of the "Appetite Control Blend" has been shown in peer-reviewed medical literature to actually control appetite.

93. Through magazine and other advertisements and displays on TrimSpa's website "www.trimspa.com", defendants have asserted, and continue to assert, numerous false, deceptive, or misleading claims about Lipo Spa, including but not limited to the following:

A. Lipo Spa is "like liposuction in a bottle;" it "sucks the fat right out of food you eat before it can get to your hips, thighs, waist, neck or arms;" and when you use it "the fat content of your food automatically gets

absorbed and is flushed right out of your body."

In fact, there is no published clinical study for humans that supports these claims. To the contrary, the studies show that when chitosan, the active ingredient that is supposed to increase fat absorption and increase fecal fat excretion, is used in the amounts that Lipo Spa recommends it has none of the alleged beneficial effects.

- B. If you use Lipo Spa "you can 'cheat' on your diet and eat delicious foods you've been sacrificing - without gaining weight" and "have the body of your dreams - and still eat the foods you crave - pizza, cheesecake, ice cream, juicy burgers, chocolate - you name it."

In fact, the only published clinical studies that correlate the use of chitosan, the active ingredient in Lipo Spa that is supposed to cause these results, with weight loss relate to subjects who were placed on low calorie diets. Therefore, these statements are misleading.

- C. "At last, it's really possible to experience a weight loss of up to four pounds a week with almost no effort on your part!"

There are no published clinical studies that support this statement. Moreover, the mean weight loss of these subjects was only 2.2 pounds over an eight week period.

- D. "...the active ingredient in Lipo Spa absorbs 4 to 5 times its weight in fat molecules" and "[e]ach half gram capsule soaks up as much as 2.5 grams of fat from the food you eat."

These statements are misleading because the in vivo studies relating to this ingredient indicate that it does not impair fat absorption and does not facilitate fecal fat excretion.

94. The product label for Lipo Spa, includes the following false or misleading claims about Lipo Spa:

- A. Lipo Spa is "Like liposuction in a bottle!" and "Amazing new 'Lipo Spa' sucks the fat right out of the food you eat-before it can get to your hips, thighs, waist, neck or arms."

In fact, there is no published clinical study for humans that supports these claims. To the contrary, the studies show that when chitosan, the active ingredient that is supposed to increase fat absorption and increase fecal fat excretion, is used in the amounts that Lipo Spa recommends it has none of the alleged beneficial effects.

- B. "Now you can 'cheat' on your diet and eat delicious foods you've been sacrificing --WITHOUT gaining weight."

In fact, the only published clinical studies that correlate the use of chitosan, the active ingredient in Lipo Spa that is supposed to cause these results, with weight loss relate to subjects who were placed on low calorie diets. Moreover, the mean weight loss of these subjects was only 2.2 pounds over an eight week period. Therefore, these statements are misleading.

95. Through magazine and other advertisements and displays on TrimSpa's website "www.trimspa.com", defendants have made, and

continue to make, the following false, deceptive, or misleading claims about CarbSpa:

- A. CarbSpa can "block carbohydrates and simple sugars from being converted into fat."

In fact, clinical investigations of phaseolamin products, such as CarbSpa, have failed to demonstrate any significant inhibitory effects of carbohydrate digestion or absorption.

96. The product labels for CarbSpa make the following false or misleading claims about CarbSpa:

- A. CarbSpa "reduces absorption of carbohydrates."

In fact, clinical studies utilizing pasta, potatoes, bread, rice, etc. as test meal components demonstrated that phaseolamin-containing products had no effect on blocking carbohydrate absorption.

- B. "Bring back the fun in food and enjoy pasta, bread, and potatoes with this new formula."

In fact, clinical studies utilizing pasta, potatoes, bread, rice, etc. as test meal components demonstrated that phaseolamin-containing products had no effect on blocking carbohydrate absorption.

97. Defendants Alex Goen and Albert Fleischner were instrumental in preparing or giving credibility to the statements set forth in paragraphs 84 to 96.

98. The use of the statements about TrimSpa, Lipo Spa and CarbSpa set forth in paragraphs 84 to 96 violated, and continue to

violate, N.J.S.A. 56:8-2, which prohibits, inter alia, the use of any "deception, fraud, false pretense, false promise [or] misrepresentation . . . in connection with the sale or advertisement of any merchandise."

COUNT FOUR

(Selling TrimSpa Through an 800 Number Without
Disclosing the Risks Associated With Its Use.)

99. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth herein and incorporated by reference.

100. Radio advertisements for TrimSpa have advised, and continue to advise, consumers that they can purchase TrimSpa by calling 1-800-TRIMSPA.

101. A consumer who calls 1-800-TRIMSPA and reports that he or she is interested in purchasing TrimSpa is interviewed by a TrimSpa representative to determine which TrimSpa product is appropriate for him or her.

102. The TrimSpa representative does not warn the consumer that the interview is no substitute for medical advice or that he or she should consult a physician before taking any TrimSpa product.

103. The TrimSpa representative asks the consumer eight questions, including whether the consumer has heart problems, high blood pressure, cancer, diabetes, allergies or an enlarged or swollen prostate. If the consumer represents that he or she does

not have heart problems, high blood pressure, cancer, diabetes, allergies or an enlarged or swollen prostate, then the TrimSpa representative will recommend ephedra-based TrimSpa to the consumer.

104. The TrimSpa representative does not, however, disclose the risks associated with the use of the ephedra-based TrimSpa product. Nor does the TrimSpa representative disclose that the consumer should consult a physician before using the product.

105. The TrimSpa representative refrains from making these disclosures because defendants do not want consumers to (a) consult their physicians about whether to commence a weight loss program that includes TrimSpa or (b) recognize that one of the costs of safely and responsibly using TrimSpa is paying a physician to monitor its use.

106. Because defendants have used, and continue to use, these deceptive practices to sell TrimSpa and other Goen Supplements they have violated, and continue to violate, N.J.S.A. 56:8-2, which prohibits the use or employment of any "unconscionable commercial practice, deception, fraud, false pretense, false promise [or] misrepresentation ... in connection with the sale or advertisement of any merchandise."

COUNT FIVE

(Deceptive Practices on the TrimSpa Website)

107. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth herein and incorporated by reference.

108. Defendant Goen maintains a website at www.trimspa.com that it uses to advertise and sell TrimSpa and other Goen products.

109. The first page of the website gives a consumer the following choices: (a) Consultation, (b) Information, (c) Questions, (d) Events, (e) Testimonials and (f) Shop.

110. If a consumer chooses the Information option, he or she can participate in a free consultation to determine "the ultimate weight loss plan for your unique metabolism and lifestyle." The consumer is advised that:

Before starting a new diet, it's important you have all the facts necessary to make an informed decision.

This site contains everything you need, including testimonials, complete ingredient testing and even frequently asked questions. Your health is important to us and helping you to achieve your ideal goal weight is our number one priority. [Continue Tour] [Click here to buy.]

[Bold in text, italics added.]

111. The statement the website provides a consumer with all of the information he or she needs to make an informed decision about starting a new diet is false because it does not contain the most important information that a consumer needs to make an

informed decision, i.e., the informed advice of his or her physician.

112. Other statements on the website are designed to encourage the belief that it is safe to use TrimSpa and other Goen Supplements without first consulting with a doctor. For example, if a consumer leaves the Information section and goes directly to the Shop section to purchase TrimSpa or another Goen Supplement, he or she receives the following information:

Before you continue, please acknowledge that you've elected not to take Trim Spa's product consultation, which selects the products most appropriate for a consumer with your health history.

If you continue without our advice, please be sure to consult your physician before taking the products you purchase.

We apologize for this additional step, but your health is extremely important to us. We've added this because we care and want you to have only the best products and results.

I acknowledge the above comments. Please continue.

Never mind, I'll take the online consultation.

[Italics added, bold in original.]

113. The statement that "[i]f you continue without our advice, please be sure to consult your physician before taking the products you purchase," suggests that a consumer who takes the consultation and follows the website's advice does not have to consult his or her physician.

114. Moreover, if a consumer goes to the Questions section of the website, and reads its answer to the question "Is ephedra safe?" he or she is advised that: (a) certain people, including consumers with high blood pressure, consumers who take MAO inhibitors and consumers with heart complications" should not take ephedra products; and (b) "[i]f you feel you might have an undiagnosed medical problem, please consult a physician before taking TrimSpa." The second piece of advice suggests that consumers who do not "feel" they have undiagnosed medical problems can take TrimSpa without consulting their physicians.

115. A consumer who goes to the Testimonials section of the website is given additional reasons to believe that most consumers can take TrimSpa without consulting a physician because none of the testimonials states that the consumer took TrimSpa after consulting with his or her doctor.

116. The website sometimes advises consumers to consult their physician before taking a Goen Supplement. This advice is inconsistent with the assurance that the website contains all of the information that a consumer needs before starting a new diet. Moreover, it appears in small print in footnotes or in other parts of the website that undermine the message.

117. One footnote, which is strategically placed so that most visitors to the website will scroll to the next page without reading it, states that:

The statements contained in this website have not been evaluated by the Food and Drug Administration. Not intended to diagnose, treat, prevent, mitigate or cure any disease. Testimonial results not typical. Your actual results may vary. Please read product labels before purchasing product. *Please check with your physician before starting any weight loss program.*

[Emphasis added.]

118. Another footnote, which appears in small print at the bottom of each page of the consultation, states that: "This TrimSpa advisor should not be considered medical advice. *If you have any questions or concerns, please consult your own doctor.*" (Emphasis added.)

119. After a consumer answers all of the questions presented during the consultation, he or she is warned that:

This program is not intended as a substitute for your doctor's professional recommendation. Consulting with your doctor is extremely important *if you are currently being treated for ANY medical condition.* Do you understand that you should always seek the advice of your doctor before starting any weight loss program?

[Emphasis added.]

120. The statements that "[t]his TrimSpa advisor should not be considered medical advice" and "[t]his program is not intended as a substitute for your doctor's professional recommendation," contradict the earlier statement that the website contains all of the information that a consumer needs to make an informed decision about whether to commence a diet program. They also contradict the

clear implication of the earlier statement that "[i]f you continue without our advice, please be sure to consult your physician before taking the products you purchase," i.e., that it is not necessary to consult a doctor if you continue and follow the website's advice. Moreover, they are at odds with the fact that none of the persons who gave testimonials stated that he or she consulted with a doctor before taking TrimSpa.

121. The statements that "[i]f you have any questions or concerns, please consult your own doctor," and "[c]onsulting with your doctor is extremely important if you are currently being treated for ANY medical condition," encourage consumers to believe that if they do not have questions and are not being treated for a current medical condition, then they can safely use the Goen Supplements without consulting a physician.

122. Consumers who complete the consultation and represent that they understand that they should always seek the advice of a doctor before starting any weight loss program are given reports that identify "the ideal weight loss package for [their] needs," based on their "specific lifestyle[s] and health histor[ies]." If the consumers provide certain answers to the questions they are told "[a]ccording to your answers, you don't seem to have any medical conditions that would otherwise limit your choice of weight loss aids. This is great news." This statement was designed to

lead consumers to believe that they can use the recommended Goen Supplements, including TrimSpa, without consulting a physician.

123. In a footnote at the conclusion of the reports, consumers are told:

Note: Results may vary based on individual effort and other factors. The statements made herein have not been evaluated by the Food and Drug Administration. Not intended to diagnose, prescribe for, treat, prevent, mitigate or cure any disease or psychological condition. *Always check with your physician before starting new routines.* We do not discourage eating or exercising. Use products only according to directions.

(Emphasis added.)

The italicized statement, which is hidden in a footnote, is the only statement in the report that suggests that a consumer should consult a physician before using a Goen Supplement that Goen recommends as appropriate for the consumer's needs.

124. Goen's website was deceptive in the following respects:

- A. It created the false impression that it contained all of the information that a consumer needed to make an informed decision about whether to commence a diet program;
- B. It created the false impression that it was safe and proper for consumers who used its consultation service to use the Goen Supplements recommended by that service without consulting with their physicians;
- C. It was only after a consumer had participated in an interactive consultation that recommended the Goen Supplements appropriate for

that consumer that the website warned the consumer to consult his or her physician before commencing a weight loss program;

- D. The warning it provided encouraged the consumer to infer that it was necessary to consult a physician only if he or she was currently being treated for a medical condition; and
- E. It stated that each consumer's health was important to it but then sold Goen Supplements to consumers with known health risks regardless of whether the consumer consulted with his or her physician about the use of the supplement.

125. Goen created the false impression that its website contained everything a consumer needed -- including testimonials, complete ingredient listings and frequently asked questions -- to make an informed decision about commencing a diet and sold its products to any consumer who orders it, represents that he or she is at least 18 years old and has the capacity to complete an internet transaction.

126. Goen hides and delays its more candid statements about the importance of consulting a physician before commencing a weight loss program because it does not want consumers to (a) consult their physicians about whether to commence a weight loss program that includes TrimSpa or other Goen Supplements or (b) recognize that one of the costs of safely and responsibly using the Goen Supplements is paying a physician to monitor their use.

127. Goen's statement that it is interested in the health of the consumers is belied by its willingness to sell its products to consumers who order its supplements without representing that their doctors approved the use of the supplement as part of a weight loss program.

128. Defendants Alex Goen and Albert Fleischner prepared or made statements that gave credibility to the TrimSpa website.

129. Because defendants have used, and continue to use, these deceptive practices to sell TrimSpa and other Goen Supplements they have violated, and continue to violate, N.J.S.A. 56:8-2, which prohibits the use or employment of any "unconscionable commercial practice, deception, fraud, false pretense, false promise [or] misrepresentation ... in connection with the sale or advertisement of any merchandise."

COUNT SIX

(Misrepresentations With Respect To the
Guarantees On the Goen Supplements)

130. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth herein and incorporated by reference.

131. Consumers who visit the TrimSpa website are also told that if they purchase TrimSpa or any other Nutramerica product from TrimSpa's website, they will be "eligible to receive the 110% Lifetime Guarantee." The guarantee, which is for the price of the products they purchase, is advertised as subject to the following

conditions: (a) the consumer must fill out and return the registration card that comes with the product within 5 days from receipt; (b) the consumer must use the entire amount of the product that he or she purchased; (c) if the consumer does not experience favorable results with within a few weeks, he or she must speak to a consultant in the Customer Care Department for assistance in attaining his or her goals; and (d) if the consumer is still unsatisfied, he or she has to write a letter explaining his or her dissatisfaction and return the empty containers to receive the refund.

132. The advertised guarantee is misleading because it fails to disclose that the registration card requires consumers to provide personal information such as family income, marital status and the gender of their children.

133. If a consumer refuses to provide this personal information, the guarantee is reduced to a right to a refund for unopened products.

134. Moreover, the TrimSpa website misleads consumers with respect to the guarantee that comes with TrimSpa and other Nutramerica products that it sells. The TrimSpa website advises consumers that they are entitled to a refund for the price of any unopened container. The TrimSpa website does not, however, disclose that TrimSpa and every other Nutramerica product comes "with a No-Nonsense, Unconditional, 30 Day Money-Back Guarantee! If for any

reason you're not completely satisfied, simply return the container to your place of purchase for a full refund." This guarantee gives consumers who stop using TrimSpa on their doctor's advice, or for any other reason, a right to a refund for the opened, as well as the unopened, containers that they purchased.

135. Because defendants have used, and continue to use, these deceptive practices to sell TrimSpa and other Goen Supplements they have violated, and continue to violate, N.J.S.A. 56:8-2, which prohibits the use or employment of any "unconscionable commercial practice, deception, fraud, false pretense, false promise [or] misrepresentation ... in connection with the sale or advertisement of any merchandise."

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, the Plaintiffs respectfully request that the Court:

- a. Find that the acts of each defendant that are alleged to be unlawful are in violation of N.J.S.A. 56:8-2 or N.J.S.A. 56:8-2.2;
- b. Assess the maximum statutory civil penalties against defendants for each violation of the Act, as authorized by N.J.S.A. 56:8-13;
- c. Assess costs, including costs for expert witnesses, and attorney's fees against defendants for the use of the

State of New Jersey as authorized by N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19;

d. Direct defendants at their own expense to restore to any affected consumer any money acquired by means of any practice alleged herein to be unlawful and found to be unlawful as authorized by N.J.S.A. 56:8-8;

e. Grant plaintiffs a permanent injunction, pursuant to N.J.S.A. 56:8-8, restraining and enjoining defendants from making, disseminating, or causing to be made or disseminated any advertisement for Goen Weight Loss Seminars or Goen Smoking Cessation Seminars unless and until it provides proper disclosure of (1) the role Goen Supplements play in the seminars, namely, that they are an essential component of Goen Weight Loss Seminars or Goen Smoking Cessation Seminars, (2) the costs of Goen Supplements, and (3) the health risks associated with the use of Goen Supplements containing ephedra;

f. Grant plaintiffs a permanent injunction, pursuant to N.J.S.A. 56:8-8, restraining and enjoining Defendants from making, disseminating, or causing to be made or disseminated any advertisement for a guarantee for any Goen seminar or any Goen Supplement unless and until defendants disclose all of the terms and conditions of the guarantee;

- g. Grant plaintiffs a permanent injunction, pursuant to N.J.S.A. 56:8-8, restraining and enjoining defendants from making, disseminating, or causing to be made or disseminated any advertisement of TrimSpa, TrimSpa EF, CarbSpa, Lipo Spa, and any other Goen products that contains unsubstantiated or misleading claims, as set forth in this Complaint;
- h. Order defendants, pursuant to N.J.S.A. 56:8-8, to cease, desist and refrain from any advertising or marketing of TrimSpa, or any other Goen Supplement that contains ephedra, without disclosing at the beginning of the advertisement that the supplement contains ephedra and the risks associated with the use of ephedra;
- i. Order defendants, pursuant to N.J.S.A. 56:8-8, to cease, desist, and refrain from the sale or distribution of TrimSpa, TrimSpa EF, CarbSpa, Lipo Spa, or any other Goen product unless and until they recall and re-label all such products to include adequate and complete warnings to consumers of all substantial health risks of these products;
- j. Order defendants, pursuant to N.J.S.A. 56:8-8, to cease, desist and refrain from advertising or marketing TrimSpa, TrimSpa EF, CarbSpa, Lipo Spa, or any other Goen product, unless and until the advertisement prominently warns consumers about all health risks, including ephedra related risks, associated with the product;

- k. Grant Plaintiffs a permanent injunction, pursuant to N.J.S.A. 56:8-8, restraining and enjoining Defendants from making, disseminating, or causing to be made or disseminated any claim that suggests that the patent that TrimSpa obtained constitutes an endorsement by the United States government of the safety or efficacy of TrimSpa; and
- l. Grant such other relief as the interests of justice may require.

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Dated: October 15, 2003